

MINNESOTA SENTENCING GUIDELINES COMMISSION
SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES
August 1999

ADOPTED MODIFICATIONS EFFECTIVE AUGUST 1, 1999

- ➡ **The Commission adopted the proposal to place or continue to place the following crimes on the Unranked Offense List in Section II.A.03. of the Commentary after considering the changes made by the 1999 Legislature:**

Adulteration - 609.687, subd. 3 (3)

Killing or harming a police public safety dog - 609.596, subd. 1

Prohibiting promotion of minors to engage in obscene works - 617.246; 617.247

Racketeering, criminal penalties (RICO) - 609.904

- ➡ **The Commission adopted the following language change to clarify that all Fleeing a Peace Officer in a Motor Vehicle offenses are felonies effective August 1, 1997:**

II.B. 301.....

The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in II.B.1.).

- ➡ **The Commission adopted the proposal to amend the language in Section II.C. Presumptive Sentence to address a law change passed by the 1999 Legislature regarding dispositions for a felony level offense under M.S. §152.18. The adopted language below is consistent with the new statutory language:**

C. Presumptive Sentence: The offense of conviction determines . . .

Similarly, when the current conviction offense is a severity level VI drug crime and there was a previous adjudication of guilt conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or ~~was convicted~~ received a similar disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. The policy regarding

previous dispositions under section 152.18 applies only if the previous disposition occurred on or after August 1, 1999.

- ➡ **The Commission adopted the following language changes to Section II.C. Presumptive Sentence to clarify that the presumptive consecutive policy for assaults committed by state prison inmates applies to those inmates who are actually confined in state facilities:**

II.C. Presumptive Sentence:

.....

In addition, the presumptive disposition for an escapes from an executed sentences and for a felony assaults committed by an inmate serving an executed term of imprisonment ~~prison sentences~~ is Commitment to the Commissioner of Corrections. It is presumptive for these offenses to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II.F. Presumptive Consecutive Sentences).

- ➡ **The Commission adopted the following language changes to Section II.F. Concurrent/Consecutive Sentences to clarify that offenses committed while on supervised release would fall under the presumptive consecutive policy:**

Presumptive Consecutive Sentences

Consecutive sentences are presumptive ~~in the following cases:~~

1. ~~When the conviction is for escape from lawful custody, as defined in Minn. Stat. 609.485 and the offender escaped from an executed prison sentence; or~~
2. ~~When the conviction is for a crime committed by an inmate~~ offender serving or on supervised release ~~serving~~, or on escape status from, an executed prison sentence.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for an escapes from an executed sentences or for a felony assaults committed by an inmate serving an executed term of imprisonment ~~prison sentence~~, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence to be consecutive to the sentence ~~for which the inmate was confined~~ being served by the offender at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumptive and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

Comment

II.F.01.

For felony convictions committed while an offender is serving, or on escape status from, an executed prison sentence, it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving for which the inmate was confined at the time the new offense was committed. As defined in M.S. §244.101, "executed prison sentence" includes both the term of imprisonment and period of supervised release. The guidelines created a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required. . . .

II.F.03. *The presumptive disposition for an escapes from an executed sentences or a felony assaults committed by an inmate serving an executed term of imprisonment ~~prison sentence~~ is commitment to the Commissioner of Corrections. It is presumptive for sentences for these offenses to be consecutive to the sentence ~~for which the inmate was confined~~ serving at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C..*

➡ **The Commission amended the language in Section II.F. Concurrent/ Consecutive Sentences, to be consistent with a law change passed by the 1999 Legislature that would make Fleeing a Police Officer in a Motor Vehicle a crime for which an offender can be prosecuted and punished in addition to any other crime committed by the defendant as part of the same conduct and would provide that a judge can impose a consecutive sentence without departing from the sentencing guidelines:**

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or
2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or
3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined; or;
5. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minn. Stat. §609.487.

Consecutive sentences are permissive under the above criteria numbers 1- 4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections

as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under 1. above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Consecutive sentences are always permissive under the above criteria number 5.

➡The Commission adopted changes to clarify the statutory cite for Theft over \$35,000 to make it consistent with the statutory reference:

Severity Level VI

Theft over \$35,000 - 609.52, subd. 2 (3), (4), (15), & (16) with 609.52, subd. 3(1)

➡The Commission adopted the proposal to rank the following new or amended crimes passed by the 1999 Legislature in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Severity Level III

Identity Theft - 609.527, subd. 3 (4)

Severity Level II

Check Forgery (~~\$204~~ \$251 - \$2,500) - 609.631, subd. 4 (3) (a)

Counterfeited Intellectual Property - 609.895, subd. 3 (a)

Dishonored Check (over \$500) - 609.535, subd. 2a (1)

Identity Theft - 609.527, subd. 3 (3)

Severity Level I

Check Forgery (~~\$200~~ \$250 or less) - 609.631, subd. 4 (3) (b)

Counterfeited Intellectual Property - 609.895, subd. 3 (b)

➡The Commission considered the changes made by the 1999 Legislature to the following crimes and adopted the proposal to continue the existing severity level rankings in Section V. OFFENSE SEVERITY REFERENCE TABLE, unless otherwise noted above:

Adulteration Crimes; Arson in the First Degree; Controlled Substance Crimes; Financial Transaction

**TECHNICAL CORRECTIONS MADE TO THE SENTENCING GUIDELINES AND
COMMENTARY - EFFECTIVE AUGUST 1, 1999**

- ➡ A correction was made to the statutory reference for False Representations under M.S. §268.182 on the *Theft Offense List*. The offense was renumbered from M.S. §268.18, subd. 3 by the 1997 Legislature:

Theft Offense List....

False Representations
~~268.18, subd. 3~~ 268.182

**OTHER ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 2000,
AFTER REVIEW BY THE 2000 LEGISLATURE**

- ➡ The Commission adopted the proposal to rank the gross misdemeanor level crime of escape at severity level 1 if it is committed with violence or the threat of violence. The use or threat of violence raises the level of this crime to a felony with a statutory maximum penalty of two years. This crime had been previously overlooked by the Commission and therefore requires Legislative review.

Severity Level 1

Escape from Custody - 609.485, subd. 4 (a) (2) & (3)

- ➡ The Commission adopted the proposal to place on the unranked offense list a crime which has been inadvertently unranked, M.S. § 116C.835; a crime dealing with the willful or negligent violation of the Midwest Interstate Low-Level Radioactive Waste Compact with a statutory maximum penalty of two years. This crime had been previously overlooked by the Commission and therefore requires Legislative review.

Midwest interstate low-level radioactive waste compact violation - 116C.835